

HIGH COURT OF UTTARAKHAND AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32(2) (b))

Description of the Case.

Writ Petition No. 832 (S/S) 2007

Mamta Sah.

... Petitioner

Vs.

State of Uttarakhand
And 2 others.

... Respondents

Approved for reporting.

~~Not approved for reporting.~~

Date of Decision 10th July, 2007.

Initial of Judge.

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL.**

Writ Petition No. 832(S/S)2007

Mamta Sah W/o Sri Santosh Lal Sah,
R/o Sah Niwas, Pitaraura,
District Pithoragarh. -----Petitioner.

Vs.

1. State of Uttarakhand through Director of Education,
Uttarakhand, Dehradun,
2. District Education Officer, District Pithoragarh,
3. Addl. District Education Officer (Basic),
District Pithoragarh. -----Respondents.

Sri Lalit Samant, learned Counsel for the petitioner and
Sri Paresh Tripathi, learned Standing Counsel for the State of Uttarakhand.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Lalit Samant, learned Counsel for the petitioner
and Paresh Tripathi, learned Standing Counsel for State of
Uttarakhand/respondents.

By means of this writ petition, the petitioner has prayed
for the following reliefs:-

- a. Issue a writ, order or direction in the nature of
certiorari for quashing of the order dated 12.06.2007
(annexure no.1) passed by respondents no.2,
- b. Issue a writ, order or direction in the nature of
mandamus directing the respondent no. 3 to comply
his duties in accordance with the law or the norms,
- c. Issue a writ, order or direction in the nature of
mandamus directing the respondents not to interfere
in the peaceful functioning of the petitioner as
Assistant Teacher, Uрга, Munokot,

- d. Issue a suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case,
- e. Award the cost of the petition in favour of the petitioner.

Vide order dated 12.06.2007 passed by respondent no. 3, the petitioner who is Primary School Teacher in Primary School, Urga, Munakot, has been transferred to Primary School Dewali, Didihat, District Pithoragarh. The said order has been passed by the respondent no. 3 on the ground that the petitioner is working in the School at Urga, Munakot in excess of the strength prescribed by the Govt. This Court, at this stage, cannot decide the question in absence of pleadings in this respect as to whether the petitioner is working in the said Institution in excess of the standard fixed by the Govt. or not? Learned counsel for the petitioner contended that vide order dated 05.06.2001, the petitioner was transferred from Primary School, Baseri, Kanalichhina to Urga Munakot and by the impugned order two Teachers, namely, Pushpa Sahi and Geeta Chand were also transferred from Urga Munakot to some other places. The aforesaid Teachers managed to remain in Primary School, Urga Munakot in spite of the order of the Authorities. Again in the year 2004, Smt. Pushpa Sahi and Geeta Chand were transferred from Urga Munakot, but again they had successfully managed to remain in the said Institution and, in fact, Smt. Pushpa Sahi is staying in the Primary School, Urga Munakot since 1987, i.e. for about 20 years.

In spite of the order transferring Smt. Pushpa Sahi and Geeta Chand in the year 2001 and again in 2004, when they did not join at new place of their posting, the Director, Schools

Education, Uttarakhand in the month of January 2005 directed the Addl. District Education Officer (Basic) to ensure that all the Teachers who have been transferred have joined at new place of their posting and in case, they have not joined at the new place of posting, their salary may not be drawn. In spite of these directions issued by the Director, Smt. Pushpa Sahi and Geeta Chand have been permitted to remain at Urga Munakot by the Addl. District Education Officer(Basic), Pithoragarh and now by the impugned order, the petitioner who has joined at Primary School, Urga, Munakot only in the month of June 2001 in pursuance of the transfer order passed by the respondents on 05.06.2001, has been transferred to Primary School, Devali, Didihat.

Learned counsel for the petitioner has further contended that the transfer order of the petitioner is against the policy framed by the Govt. in regard to the transfer of the Teachers and Smt. Pushpa Sahi has also over stayed in the present Primary School which is against the policy decision of the Govt. framed for transferring the Teachers.

It is true that the Executive Instructions in respect of transfers are directory in nature but as far as possible, these instructions must be complied with by the Authorities concerned. It is also well settled law that if a transfer order is passed, it is an incident of service and no interference is called for with the same. But if the transfer order is not passed in public interest and is passed in colourable exercise of powers, it is open to challenge being illegal and the Court has also power to issue mandamus to stop transfer made illegally and by using colourable exercise of power by the Transferring Authority.

Learned counsel for the petitioner has submitted that although Smt. Pushpa Sahi was transferred time and again and she has not only managed to remain in the School since 1987 but the Authorities have also not complied with the orders passed by the Higher Authority to ensure that the Teachers who have been transferred must join at new place of posting otherwise their salary should not be drawn. This order passed by the Director of School Education, which has not been complied with by the Addl. District Education Officer (Basic), Pithoragarh, who is a subordinate officer. This Court generally should not interfere in these types of cases, but in peculiar circumstances, the Court cannot shut its eyes.

Learned counsel for the petitioner placed reliance on the judgment of **Hon'ble Full Bench of Allahabad High Court in the case of Tara Prasad Mishra Vs. State of U.P. reported in 1990 Vol-2 U.P. Local Bodies and Educational Cases, page 905.** In the cited case, an order was passed by the Addl. Director, directing the Chief Medical Officer to cancel the order of transfer. This order was not complied with by the Chief Medical Officer, Basti in these circumstances, the Full Bench in para-6 of the cited judgment has held that *"normally all executive actions in the State are taken in the name of the Governor but every executive decision is not required to be expressed formally particularly in a case when superior officer directs a subordinate to act in a particular way. In this view if a direction is given by a Minister, it will be an executive action of the Minister. The direction issued by the Minister, in respect of conduct of government business or in respect of transfer will be a direction or order by the State Government. If in exercise of executive powers, the Minister issues a particular direction,*

the subordinates are duty-bound to obey it. If a direction is issued to a subordinate to convey it to his subordinates in fact who is to act, the subordinate will be duty bound to act in a country governed by rule of law. The State Government has got powers to transfer Class III employees out of district. In a democratic country where rule of law prevails, the work of the Government is carried on through civil servants having a hierarchy. The hierarchy is also bound by norms and discipline and violation of directions of the superiors will amount of insubordination and misconduct. No government can function in case indiscipline and insubordination are given up because it will lead to anarchy and disaster to the entire and democratic structure and the rule of law”.

In the cited case, some directions were issued by the minister concerned to the Addl. Director and the Addl. Director had conveyed the same to the Chief Medical Officer, Basti, which was not complied with by the Chief Medical Officer.

In the present case, in hand, the Director of School Education, has issued directions in the month of June 2005 and that order has not been complied with by the Addl. District Education Officer (Basic) and Smt. Pushpa Sahi managed to remain in the said Institution from where she got transferred and by the impugned order a colourable exercise of power was made in respect of the transfers of those persons who have over stayed in a particular Institution. The petitioner has been transferred from the present Institution who had joined the present Institution only in the year 2001.

In these circumstances, I deem it fit and proper to direct the Addl. District Education officer (Basic), to explain why the

earlier orders passed the Director of Schools Education were not complied with and why the persons who have over stayed in a particular Institution have been left and the petitioner who has joined at Uрга Munakot only in the year 2001 has been transferred. This explanation will be submitted by the Addl. District Education Officer (Basic), Pithoragarh to the Director School Education, Uttarakhand within a period of one month. After receiving explanation it is expected from the Director or any other officer nominated by the Director to pass appropriate orders in respect of petitioner's transfer. Till the matter is pending before the Director or before the officer nominated by the Director, operation of order dated 12th June 2007 passed by the Addl. District Education Officer (Basic), Pithoragarh, so far as it relates to the petitioner, shall remain stayed.

This Court has experience that in all districts of the State, the Teachers are being transferred by the Addl. District Education Officer/District Education Officer without applying mind and without going through the policy which has been framed and while transferring any incumbents the Authorities have exercised their discretion in favour of some Teachers for the reasons best known to them. When the State Govt. has laid down the policy and the procedure as to how and in what circumstances a Teacher can be transferred, it is obligatory on the part of Transferring Authority to follow the same in its letter and spirit. In the circumstances mentioned above, it is expected that the Higher Authorities in Education Department, State of Uttarakhand may issue necessary directions to all the District Education Officer / Addl. District Education Officer, to pass transfer order after application of mind and after going through the records and as per the policy laid down by the Govt.

With these directions, the writ petition is finally disposed of. No order as to costs.

The Registry is directed to sent a copy of this judgment to the Director of School Education, Govt. of Uttarakhand, Dehradun as well as to the Principal Secretary, Education Department, Govt. of Uttarakhand, Dehradun.

(M.M. Ghildiyal, J.)

July 10, 2007:
NCM: